IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Forr, et al.	Group Art Unit:	2632
Serial No.:	10/800,447	Examiner:	Tang, Son M.
Filed:	March 15, 2004		
For:	**METHODS AND SYSTEMS FOR GATHERING MARKET RESEARCH DATA WITHIN COMMERCIAL ESTABLISHMENTS**		

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 2233-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the final Office Action, dated October 18, 2006, in the above-referenced U.S. patent application, the applicants hereby request review of the final Office Action. No amendments are being filed with this request. Accompanying this request is a Notice of Appeal and associated Fees. The Director is hereby authorized to charge any additional fees which may be required by this submission to our Deposit Account No. 03-3415.

The review is requested for the reasons stated on the attached sheets (No more than five (5) pages attached).

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed: Commissioner of Patents P.O. Box 1450, Alexandria, VA 22313-1450, on December 6, 2006
Date of Deposit

Mark Montague
Attorney

Signature

December 6, 2006
Date of Signature

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Account No. 03-3415.

REASONS FOR REQUESTING REVIEW OF FINAL REJECTION

I. Introduction

Applicants hereby request review of the rejection of the claims as set forth in the final Office Action dated October 18, 2006.

Claims 1-36 are pending in this application. Claims 1-25, 27-32 and 34-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Busche et al. (US2003/0055707, "Busche") in view of Hines et al. (US 6,396,413, "Hines"). Claims 26 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Busch in view of Hines, and further in view of Duhame et al. (US 5,541,585, "Duhame"). For the reasons discussed below, it is respectfully submitted that it is improper to combine Busche with either Hines or Duhame to reject the claims.

II. Applicants' Invention

The present invention pertains in general to the monitoring of the movement within a commercial establishment of participants in a market research study. Signal transmitters are provided at predetermined locations within the commercial establishment and wirelessly transmit location signals associated with those locations. Each of the participants in the market research study are provided with a wireless receiver that is adapted to be carried on the person of the participant and is operative to receive the location signals when in a vicinity of a respective signal transmitter. Independent claims 1 and 3 and various dependent claims provide that the wireless receiver receives a location signal only when in such vicinity. Time data associated with the location signals and a time of reception thereof are stored within the wireless receiver for use in the market research study.

III. The Office Actions and The Cited References

In the initial Office Action (dated May 20, 2005), original claims 1-22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Busche. In response, applicants amended

certain claims, added claims 23-36, and presented arguments. In a second, non-final Office Action (dated February 28, 2006), claims 1-25, 27-32 and 34-36 were rejected under 35 U.S.C. 103(a) as being unpatentable over Busche in view of Hines, and claims 26 and 33 were rejected under 35 U.S.C. 103(a) as being unpatentable over Busch in view of Hines, and further in view of Duhame. In response, applicants submitted arguments only, asserting that it is improper to combine Busche with either Hines or Duhame to reject the claims

In the Final (third) Office Action (dated October 18, 2006), all of the rejections set forth in the second Office Action were maintained.

The Busche Reference

Busche discloses the use of the Global Positioning System (GPS) or enhanced GPS (EGPS) and receivers disposed on shopping baskets to track the paths of customers within a store for the purpose of ascertaining favorable positioning of products within the store (Abstract, par. 0009). Products reside at specific locations on shelves and the locations of the placement of products are determined and stored in a database (par. 0063). GPS may be utilized to identify the locations of the placement of the products. Local EPGS transmitters 331-338 (Fig. 3) also may be employed to enhance or replace the satellite signals so that product locations are identified. Each shopping basket is fitted with a GPS receiver that records customer movement throughout the store (par. 0065). When a customer is at a checkout counter, the data stored in the GPS receiver, representing the path of the customer, is transmitted to a computer. The locations of the products within the retail space are associated with the paths of the customers to form a set of spatial relationships (par. 0009).

In the final Office Action, the Examiner acknowledged that "Busche does not specifically disclose that the receiver [is] adapted to be carried on the person." The Examiner relied upon Hines for teaching the use of "a personal monitor system comprising a receiver 20 which is

carried on a person for recording the locations and time stamp data ..." (page 2).

The Hines Reference

Hines pertains to a personal alarm monitor system intended for use within a correctional facility or in another emergency situation. A person to be tracked carries a portable device which receives signals from RFID transmitters placed at particular locations (e.g., opposite ends of a hallway, doorways, stairways) within the facility (Abstract, col. 1, lines 13-23; col. 3, lines 26-58; Fig. 1). "The overall operation of the system, however, is intended to provide general position information rather than pinpoint coordinates." (col. 3, lines 55-57). Each RFID transmitter has a unique identification and the portable device carried by a person receives and stores the unique identification, along with a time stamp, when in close proximity to the transmitter. The stored information forms a record of the general travel pattern of the person within the monitored premises (col. 3, line 59 to col. 4, line 9).

In the rejection of dependent claims 26 and 33, the Examiner acknowledged that neither Busche nor Hines discloses detecting the presence of a person in proximity to a transmitter which is adapted to not transmit a signal when the person is not detected. (Final Office Action, page 8). The Examiner relied upon Duhame for disclosing this feature.

The Duhame Reference

Duhame pertains to a security system that controls access through a controlled portal (e.g., a door) by employing a presence detector which senses an object near an approach zone located near the door. Upon detecting an object (e.g., a person), a transceiver transmits an interrogation signal and a portable transceiver, carried by such person, responds to the interrogation signal with a response signal. If the response signal is valid, the door is unlocked to allow access through the portal (Abstract; Fig. 1; col. 1, lines 45-55; col. 3, lines 34-44).

IV. The Combination of References is Improper to Reject the Claims

Busche employs the use of GPS or EGPS within a retail store to enable GPS receivers disposed on shopping baskets to track customer movement to ascertain favorable positioning of products. Busche does not disclose the use of RFID type transmitters.

Hines is not concerned with product placement, retail stores or market research. Hines employs a position tracking system to monitor the general location of individuals along hallways for use in correctional facilities and other emergency situations. The system disclosed in Hines is not intended for pinpoint accuracy.

In the final Office Action, the Examiner stated that "It would have been obvious ... to have a receiver that [is] carried on the person as suggested by Hines, to the participants in a market research study of Busche, for the purpose of more convenience and accura[cy]." (pages 2-3). The Examiner further stated that "not all shopper[s] need a shopping basket in the retail environment ... thus, carry only location tracking receiving on the person is [more] comfortable and convenien[t] than carry[ing] an unnecessary shopping basket." (page 9, lines 5-8). First, where are these concepts suggested in the prior art? Busche suggests shopper convenience by fitting receivers on shopping baskets and is completely silent as to how one is to track shoppers who do not use these baskets. Instead, Busche seems to teach away from the concept/practice of having shoppers carry the receivers, as evidenced by the following discussion in Busche: "As the shopping basket is returned to a basket storage location within the store, the storage device may be reset in preparation for its use by another patron." (par. 0065).

With regard to Hines, the Examiner asserted that "wearing location tracking receiver on the person is more accurate than on the basket. ... Examiner uses Hines merely to interpret that location tracking receiver can be worn on the person ..." (final Office Action, page 9, lines 8-12). First, the fact that a reference teaches that is a receiver "can" be worn on the person is

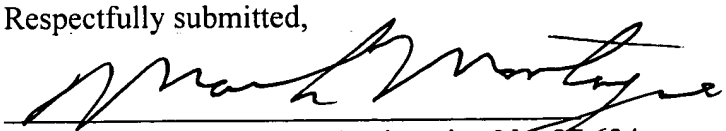
insufficient to establish that the modification to Busche would have been obvious. In fact, since Hines discloses only general position information (not "pinpoint coordinates") (see Hines, col. 3, lines 55-57), one would be discouraged, that is, taught away, from using teachings in Hines to modify the system/method taught in Busche. Finally, Hines is directed to security systems and thus its overall intended use does not support the position that it suggests or otherwise motivates one to modify Busche as proposed by the Examiner.

Separately, the Examiner incorrectly asserted that Busche discloses applicants' claimed feature that the receivers in Busche receive "respective ones of the location signals only when in a vicinity of each of the locations ..." (Final Office Action, par. no. 2, 4th paragraph). As is well known, GPS and EGPS systems do not operate in this manner. Rather, multiple signals are received by a receiver, in GPS and EGPS systems, from various transmitters that are not necessarily "in a vicinity" of those transmitters. (also see Applicants' Response dated November 21, 2005, page 11, lines 5-21).

As for Duhame, since this reference is similar to Hines, one of ordinary skill in the art would not find it obvious to combine the teachings of Busche with Duhame, with or without Hines, for those reasons already discussed.

In view of the foregoing, it is respectfully requested that the rejection of pending claims 1-36 be withdrawn.

Respectfully submitted,

By: 

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